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[illegible] of the United States

[illegible]

[illegible], Petitioner,

v.

The United States.

Charles H. Phelps, as Surviving Partner of [illegible] and Charles G. Phelps, Co-partners, Doing Business Under the Firm Name and Style of [illegible] & Co., Petitioner,

v.

The United States.

On Petition for Writ of Certiorari to the Court of Claims

[illegible]

[illegible]

In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 362

LIGGETT & MYERS TOBACCO COMPANY, PETITIONER
v.
THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

No. 531

CHARLES H. PHELPS, AS SURVIVING PARTNER OF Howard Phelps and Charles H. Phelps, Copartners, Trading Under the Firm Name and Style of Phelps Bros. & Co., petitioner
v.
THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

MOTION TO ADVANCE

The United States moves that the above causes be advanced for hearing at this term.

In No. 362 the writ of certiorari to review a judgment of the Court of Claims was granted October 11, 1926, without opposition from the

United States. The question involved is whether the United States should pay for tobacco products obtained by it from the petitioner, merely their value at the date they were delivered to the United States, or "just compensation" for them, which would include the equivalent of interest on their value, to the date of payment, and this, in turn, depends on whether the products were obtained by the United States through the exercise of the power of eminent domain, or under a contract to pay the reasonable value at the date of delivery.

The products were delivered by the petitioner as the result of an order compliance with which was stated in it to be "obligatory." The petitioner accepted the order in the sense of consenting to deliver the tobacco, but refused the price stated in the offer. The Court of Claims held there was not a taking, but a contract to pay the reasonable value, and as there was no express promise to pay interest, the petitioner was limited to recovery of the value at date of delivery without interest thereon, or its equivalent, to the date of payment.

In No. 531, the writ of certiorari to review a judgment of the Court of Claims was granted October 25, 1926, without opposition from the United States. In this case a leasehold estate was taken by the United States under the power of eminent domain, and under authority of a statute which did not confer jurisdiction on the Court of Claims, the jurisdiction of that court being based on Section

145 of the Judicial Code, giving it jurisdiction of claims on contracts, express or implied. The court held that the implied contract in this case was not to pay "just compensation," but the value at the time of the taking, and since there was no express agreement to pay interest none could be allowed. One question is whether the equivalent of interest on the value to the date of payment, held in *Seaboard Air Line Railway Company* v. *United States*, 261 U. S. 299, to be necessary to just compensation, is in any true sense interest within the meaning of Section 177 of the Judicial Code, forbidding allowance of interest on contracts unless expressly provided for.

These two cases are typical of a class a considerable number of which are pending in the Court of Claims and District Courts, and some of which are pending in this Court or are on their way here.

The cases, while dealing with aspects of the same problem, are not alike, and decision in both is necessary to cover the field. Opposing counsel in the two cases are not the same, and the cases can not be set down for hearing as one case, although it would shorten the labors of the Court and counsel if they could be heard on the same day.

We have not overlooked the statement heretofore made by the Court that several cases involving the same question would not be advanced for hearing together, owing to the resulting confusion in division of time. On the contrary, we have re-

garded that admonition by selecting two cases typical of two related groups, and have refrained from moving to advance others like them.

It will expedite the disposition of many like cases pending below, and if the decisions should be adverse to the United States, will save the United States large sums in interest, if these cases are disposed of at this term.

Notice has been given opposing counsel.

Respectfully submitted.

William D. Mitchell,
Solicitor General.

December, 1926.

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